It is injecting religious controversy into the Civil Government when that is the very thing from which these constitutional guaranties sought to keep it free. *Donahue v. Richards, supra.* It is not the object of these provisions to insure the aid of the courts to propagandists who would take upon themselves the mission of destroying the influence of the Bible. *Moore v. Monroe, supra.*

THE RIGHT OF PRIVACY.

In *Jeffries v. New York Evening Journal,* 124 N. Y. Supp., 780, the plaintiff sought to enjoin the defendant from using the plaintiff's name, portrait or picture in, or in connection with, a so-called biography or life history of the plaintiff. Plaintiff relied upon section 51 of the *Civil Rights Law,* which prohibits the use of any person's name, portrait or picture, without his consent, for advertising purposes, or for purposes of trade. It was held that a person's picture is not used for advertising purposes, or for purposes of trade, unless it is a part of an advertisement, nor is it used for purposes of trade, within the section, when merely used for dissemination of information, and not for commerce or traffic.

That the individual shall have full protection in person and property, is a principle as old as the common law. As Judge Cooley states it, "he has the absolute right to be let alone." *Cooley on Torts,* third ed., p. 29. None of the great commentators mention a "right of privacy." The courts are by no means uniform upon the point, therefore in many of the states, where the right is denied to exist as a legal doctrine, civil rights laws are passed.

A close analysis of all the English cases cited in support of the right, show that they turned upon property or contract rights. In order that an injunction may issue to restrain the defendant from using a plaintiff's name, the use of it must be such as to injure plaintiff's reputation or property. *Dockrell v. Dougall,* 78 L. T. R., 840. In *Prince Albert v. Strange,* 1 M. N. & G., 23, the queen and prince having made some etchings and drawings for their amusement, decided to have copies made from the etched plates, for presentation to their friends. The workman employed

to make the copies made some on his own account, and transferred them to Strange, who purported to exhibit them. Lord Cottenham, in granting an injunction, said: "Privacy is the right invaded. A man is entitled to be protected in the exclusive use and enjoyment of that which is exclusively his." The court's decision, however, was based upon the property rights in the etched plates, and breach of faith on the part of the workman.

In *Tuck & Sons v. Priester,* 19 Q. B. D., 639, the plaintiff was owner of a picture, and employed defendant to make a certain number of copies. The defendant also made a number of copies for himself, and offered them for sale. The court issued an injunction, and awarded damages, upon the ground of an implied contract not to make more copies than were ordered by plaintiff. So also in the case of *Pollard v. Photographic Co.,* 40 Ch. Div., 345, the plaintiff had her photograph made by defendant, who made some extra copies from the negative, and placed them upon exhibition. Injunction was issued upon the theory of the property right of the plaintiff in the negative likeness, and upon the implied contract of defendant. There is a *dictum* in this case, that if defendant had secured the original likeness without plaintiff's knowledge, there would have been no right of action.

In the United States, the earliest mention we find of the "right of privacy," as such, is an able article, "The Right of Privacy," 4 Harv. Law R., 193 (1890). The earliest case in point is *Schuyler v. Curtis,* 147 N. Y., 434. In this case the plaintiff sought to enjoin the defendant from exhibiting a statue or bust of a relative. Injunction was denied, on the ground that if a right had existed, it expired at the death of the person. There is *dictum* in that case, that courts have power, in some cases, to enjoin the doing of an act, when the nature or character of the act itself is well calculated to wound the sensibilities of an individual, and when the doing of the act is wholly unjustifiable, and is, in legal contemplation, a wrong, even though the existence of no property is involved in the subject. Relying upon this *dictum,* the plaintiff in *Roberson v. Rochester Box Co.,* 171 N. Y., 538, sought to enjoin the defendant from publishing her picture without her consent, upon an advertisement of a brand of flour. The injunction was denied by a divided court, four to three. Parker, Ch. J., in delivering the opinion of the majority, said, "If such a principle be incorporated into the body of the law, the attempt to logically apply the princi-

ple will lead not only to a vast amount of litigation, but to litigation bordering upon the absurd. The right of privacy once established as a legal doctrine cannot be confined to the restraint of the publication of a likeness, but must necessarily embrace, as well, the publication of a word picture." This holding was followed by a very recent case, *Henry v. Cherry,* 73 Atl., 97 (R. I., 1909), emphatically denying the existence of such a right, which held: "There is no common law right of privacy, which will give one a right of action for the publication, by another, of his photograph as part of an advertisement of the latter's business, although mental suffering is thereby inflicted upon him."

But opposed to this view the Federal court in *Corliss v. Walker,* 64 Fed., 280, recognizes the right of a private individual to prohibit the reproduction of his photograph. They distinguish between a private and a public individual, and define a public character as any individual who seeks or desires public recognition. Doubtless the courts will get into hopeless confusion in any attempt to enforce such a distinction, for if the right of privacy exists in one individual, it exists in all, although it may have more value to one person than to another.

The Georgia court, in *Paversick v. Life Ins. Co.,* 122 Ga., 190, declare in favor of the right of privacy. Adopting and following the dissenting opinion of Gray, J., in *Roberson v. Box Co., supra,* Cobb, J., in delivering the unanimous opinion of the court, said: "The right of privacy is derived from the natural law. The right of privacy may be waived expressly or by implication. A waiver authorizes an invasion of the right only to such an extent as is necessarily implied from the purposes for which the waiver was made. A person who desires to live a life of seclusion cannot be compelled, against his consent, to exhibit his person in a public place, unless such exhibition be demanded by law. One who desires to live a life of partial seclusion has a right to choose the times, places, and manner, in which, and at which, he will submit to the public gaze. Subject to the limitations above referred to, the body of a person cannot be put on exhibiton at any time, or at any place, without his consent." *Foster v. Chinn,* 134 Ky., 424, holds, that a person is entitled to the right of privacy as to his picture, and that the publication of his picture, without his consent, as a part of an advertisement for the purpose of exploiting

the publisher's business, is a violation of his right of privacy, and entitled him to recover without proof of special damages.

Our Supreme Court raises a sensible query in *Brown v. Meyer,* 139 U. S., 540, when it says: "It is difficult to understand why the peculiar cast of one's features is not also one's property, and why its pecuniary value, if it has any, does not belong to its owner, rather than to the person seeking to make an unauthorized use of it."

From a close survey of all the cases involving the so-called right of privacy, it seems, by the weight of authority, that injury to property, in some form, is an essential element to relief. But following the suggestion in *Brown v. Meyer,* supra, it seems that one has a property right in his photograph.